

**ASSEMBLY BILL**

**No. 1331**

---

**Introduced by Assembly Member Umberg**

February 22, 2005

---

An act to amend Sections 4663 and 4664 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1331, as introduced, Umberg. Workers' compensation: apportionment: presumptions.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law provides that, in the case of certain state and local public safety members, the term "injury" includes hernia, heart trouble, and pneumonia that developed or manifested itself during a period while the person is in that service. Existing law further establishes a disputable presumption in this regard and prohibits these medical conditions from being attributed to any disease existing prior to the development or manifestation of that medical condition.

Existing law requires any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability, and limits the employer's liability to the percentage of permanent disability directly caused by the injury.

This bill would exempt the above medical conditions for certain public safety members from the application of this requirement and limitation.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4663 of the Labor Code is amended to  
2 read:

3 4663. (a) Apportionment of permanent disability shall be  
4 based on causation.

5 (b) Any physician who prepares a report addressing the issue  
6 of permanent disability due to a claimed industrial injury shall in  
7 that report address the issue of causation of the permanent  
8 disability.

9 (c) In order for a physician's report to be considered complete  
10 on the issue of permanent disability, it must include an  
11 apportionment determination. A physician shall make an  
12 apportionment determination by finding what approximate  
13 percentage of the permanent disability was caused by the direct  
14 result of injury arising out of and occurring in the course of  
15 employment and what approximate percentage of the permanent  
16 disability was caused by other factors both before and subsequent  
17 to the industrial injury, including prior industrial injuries. If the  
18 physician is unable to include an apportionment determination in  
19 his or her report, the physician shall state the specific reasons  
20 why the physician could not make a determination of the effect  
21 of that prior condition on the permanent disability arising from  
22 the injury. The physician shall then consult with other physicians  
23 or refer the employee to another physician from whom the  
24 employee is authorized to seek treatment or evaluation in  
25 accordance with this division in order to make the final  
26 determination.

27 (d) An employee who claims an industrial injury shall, upon  
28 request, disclose all previous permanent disabilities or physical  
29 impairments.

30 (e) *This section shall not apply to injuries or illnesses covered*  
31 *under Sections 3212 and 3213.*

32 SEC. 2. Section 4664 of the Labor Code is amended to read:

33 4664. (a) The employer shall only be liable for the percentage  
34 of permanent disability directly caused by the injury arising out  
35 of and occurring in the course of employment.

1 (b) If the applicant has received a prior award of permanent  
2 disability, it shall be conclusively presumed that the prior  
3 permanent disability exists at the time of any subsequent  
4 industrial injury. This presumption is a presumption affecting the  
5 burden of proof.

6 (c) (1) The accumulation of all permanent disability awards  
7 issued with respect to any one region of the body in favor of one  
8 individual employee shall not exceed 100 percent over the  
9 employee's lifetime unless the employee's injury or illness is  
10 conclusively presumed to be total in character pursuant to  
11 Section 4662. As used in this section, the regions of the body are  
12 the following:

13 (A) Hearing.

14 (B) Vision.

15 (C) Mental and behavioral disorders.

16 (D) The spine.

17 (E) The upper extremities, including the shoulders.

18 (F) The lower extremities, including the hip joints.

19 (G) The head, face, cardiovascular system, respiratory system,  
20 and all other systems or regions of the body not listed in  
21 subparagraphs (A) to (F), inclusive.

22 (2) Nothing in this section shall be construed to permit the  
23 permanent disability rating for each individual injury sustained  
24 by an employee arising from the same industrial accident, when  
25 added together, from exceeding 100 percent.

26 (d) *This section shall not apply to injuries or illnesses covered*  
27 *under Sections 3212 and 3213.*